MONTANA LEGISLATIVE HISTORY

Chapter 498 19 75

Bill H 666 S _____ Original bill & history ✓ C

H. Committee on Natural Resources			S. Committee on Natural Resources and Fish & Game		
Hearing Date(s)	Feb 22	✓ C	Hearing Date(s)	Mar 18	✓ C
	Feb 25	✓ C			C
	Feb 28	✓ C			C
		C			C
Date Out	Feb 28	✓ C		Mar 18	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

HOUSE BILL NO. 666

INTRODUCED BY VINCENT

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR A GUARANTEE OF IMPROVEMENTS AND COMPENSATION FOR THE COST OF SERVICES CREATED BY SUBDIVISIONS; REQUIRING DISAPPROVAL OF ANY SUBDIVISIONS IN THE ABSENCE OF A DEMONSTRATED NET PUBLIC BENEFIT; PROVIDING FOR EXPANDED CITIZEN LEGAL REVIEW OF SUBDIVISION DECISIONS MADE BY THE GOVERNING BODY; AMENDING SECTIONS 11-3860 THROUGH 11-3864 AND 11-3866, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 11-3860, R.C.M. 1947, is amended to read as follows:

"11-3860. Statement of purpose. It is the purpose of this act to promote the public health, safety, and general welfare by regulating the subdivision of land; to prevent overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements; to ~~encourage~~ require development in harmony with the natural environment; to require that approval of any subdivision be contingent upon a finding of net public benefit by the governing body; to require that the subdivider assume financial responsibility for the completion of improvements and cost of services required by the subdivision; and to require uniform monumentation of land subdivisions and transferring interests in real property by reference to plat or certificate of survey."

Section 2. Section 11-3861, R.C.M. 1947, is amended to read as follows:

"11-3861. Definitions. As used in this act, unless the context or subject matter clearly requires otherwise, the following words or phrases shall have the following meanings:

(1) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.

(2) "Dedication" means the deliberate appropriation of land by an owner for any general and public use, reserving to himself no rights which are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted.

(2.1) "Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring, or contracting to transfer, title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision

plat establishing the identity of the segregated parcels pursuant to this act. Provided that where required by this act the land upon which an improvement is situated has been subdivided in compliance with this act, the sale, rent, lease or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land and is not subject to the terms of this act.

(3) "Examining land surveyor" means a registered land surveyor duly appointed by the governing body to review surveys and plats submitted for filing.

(4) "Governing body" means a board of county commissioners or the governing authority of any city or town organized pursuant to law.

(4.1) "Irregularly shaped tract of land" means a parcel of land other than an aliquot part of the United States government survey section or a United States Government lot the boundaries or areas of which cannot be determined without a survey or trigonometric calculation.

(5) "Planned unit development" means a land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks, or any combination thereof which comprises a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common

ownership or use.

(6) "Plat" means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, and alleys, and other divisions and dedications.

(7) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision which furnish a basis for review by a governing body.

(8) "Final plat" means the final drawing of the subdivision and dedication required by this act to be prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in this act and in regulations adopted pursuant thereto.

(9) "Registered land surveyor" means a person licensed in conformance with the Montana Professional Engineers' Registration Act (sections 66-2301 through 66-2347) to practice surveying in the state of Montana.

(10) "Registered professional engineer" means a person licensed in conformance with the Montana Professional Engineers' Registration Act (sections 66-2301 through 66-2347) to practice engineering in the state of Montana.

(11) "Subdivider" means any person who causes land to be subdivided or who proposes a subdivision of land.

(12) "Subdivision" means a division of land, or land so divided, which creates one or more parcels, ~~containing--less than---twenty--(20)--acres,--exclusive--of--public--roadways~~ regardless of size, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed, and shall include any resubdivision; and shall further include any condominium or area, regardless of its size, which provides or will provide multiple space for recreational camping vehicles, or mobile homes. A subdivision shall comprise only those parcels ~~less-than twenty-(20)--acres~~ which have been segregated from the original tract, and the plat thereof shall show all such parcels whether contiguous or not. Provided, however, condominiums constructed on land divided in compliance with this chapter are exempt from the provisions of this chapter.

~~(13)-"Occasional-sale"-means-one-sale-of-a-division--of land-within-any-twelve-month-(12)-period.~~

(13) "Subdivision improvements agreement" means one or more security agreements which may be accepted by a governing body to secure the construction of such public improvements within the subdivision as are required by subdivision regulations and shall include collateral, such as, but not limited to, performance or property bonds, private or public escrow agreements, loan commitments, assignments of receivables, liens on property, deposit of

certified funds, or other similar surety agreements."

Section 3. Section 11-3862, R.C.M. 1947, is amended to read as follows:

"11-3862. Surveys required--exceptions--standards for monumentation. (1) All divisions of land for sale other than a subdivision after the effective date of this act into parcels which cannot be described as 1/32 or larger aliquot parts of a United States government section or a United States government lot must be surveyed by or under the supervision of a registered land surveyor.

(2) Every subdivision of land after June 30, 1973, shall be surveyed and platted in conformance with this act by or under the supervision of a registered land surveyor. Subdivision plats shall be prepared and filed in accordance with this act and regulations adopted pursuant thereto. All division of sections into aliquot parts and retracement of lines must conform to United States bureau of land management instructions, and all public land survey corners shall be filed in accordance with Corner Recordation Act of Montana (sections 67-2001 through 67-2019). Engineering plans, specifications, and reports required in connection with public improvements and other elements of the subdivision required by the governing body shall be prepared and filed by a registered engineer or a registered land surveyor as their respective licensing laws allow in

accordance with this act and regulations adopted pursuant thereto.

(3) The county clerk and recorder of any county shall not record any instrument which purports to transfer title to or possession of a parcel or tract of land which is required to be surveyed by this act unless the required certificate of survey or subdivision plat has been filed with the clerk and recorder and the instrument of transfer describes the parcel or tract by reference to the filed certificate or plat.

(4) Instruments of transfer of land which is acquired for state highways may refer by parcel and project number to state highway plans which have been recorded in compliance with section 32-2413, and are exempted from the surveying and platting requirements of this act; provided, however, that if such parcels are not shown on highway plans of record, instruments of transfer of such parcels shall be accompanied by and refer to appropriate certificates of survey and plats when presented for recording.

(5) The provisions of this act shall not apply to the division of state-owned land unless the division creates a second or subsequent parcel from a single tract for sale, rent or lease for residential purposes after July 1, 1974.

(6) Unless the method of disposition is adopted for the purpose of evading this act, the following divisions of land

are not subdivisions under this act but are subject to the surveying requirements of this section for divisions of land not amounting to subdivisions.

(a) Divisions made for the purpose of relocating common boundary lines between adjoining properties.

(b) Divisions made for the purpose of a gift or sale to any member of the landowner's immediate family.

(c) Divisions made by sale or agreement to buy and sell where the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes. Any change in use of the land for anything other than agricultural purposes subjects the division to the provisions of this chapter.

~~(d) A single division of a parcel when the transaction is an occasional sale.~~

(7) Subdivisions created by rent or lease are exempt from the surveying and filing requirements of this act but must be submitted for review and approved by the governing body before portions thereof may be rented or leased.

(8) Unless the method of disposition is adopted for the purpose of evading this act, the requirements of this act shall not apply to any division of land:

(a) which is created by order of any court of record in

this state or by operation of law, or which, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain (sections 93-9901 through 93-9926);

(b) which is created by a lien, mortgage, or trust indenture;

(c) which creates an interest in oil, gas, minerals, or water which is now or hereafter severed from the surface ownership of real property;

(d) which creates cemetery lots;

(e) which is created by the reservation of a life estate;

(f) which is created by lease or rental for farming and agricultural purposes.

(9) The sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land, as that term is defined in this act, and is not subject to the requirements of this act.

(10) The department of intergovernmental relations shall, in conformance with the Montana Administrative Procedure Act (sections 82-4201 through 82-4225), prescribe uniform standards for monumentation and for the form, accuracy, and descriptive content of records of survey.

(11) It shall be the responsibility of the governing body to require the replacement of all monuments removed in the course of construction."

Section 4. Section 11-3863, R.C.M. 1947, is amended to read as follows:

"11-3863. Enforcement by governmental subdivisions --adoption of regulations--public hearing. (1) The governing body of every county, city, and town shall, before July 1, 1974, adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for the orderly development of their jurisdictional areas; for the co-ordination of roads within subdivided land with other roads, both existing and planned; for the dedication of land for roadways and for public utility easements; for the improvement of roads; for the provision of adequate open spaces for travel, light, air and recreation; for the provision of adequate transportation, water, drainage, and sanitary facilities; for the avoidance or minimization of congestion; and for the avoidance of subdivision which would involve unnecessary environmental degradation; and the avoidance of danger or injury to health, safety, or welfare by reason of natural hazard or the lack of water, drainage, access, transportation or other public services or would necessitate an excessive expenditure of public funds for the supply of such services.

Prior to adopting or amending subdivision regulations pursuant to this act, the governing body shall submit the proposed regulations or amendments to the division of planning and economic development of the department of intergovernmental relations for review.

Before the governing body adopts subdivision regulations pursuant to this section it shall hold a public hearing thereon and shall give public notice of its intent to adopt such regulations and of the public hearing by publication of notice of the time and place of the hearing in a newspaper of general circulation in the county not less than fifteen (15) nor more than thirty (30) days prior to the date of the hearing.

(2) Not later than December 31, 1973, the department of intergovernmental relations, through its division of planning, shall, in conformance with the Montana Administrative Procedure Act (sections 82-4201 through 82-4225), prescribe reasonable minimum requirements for subdivision regulations adopted pursuant to this act. The minimum requirements shall include detailed criteria for the content of the environmental assessment required by this act. The department shall provide for the review of preliminary plats by those agencies of state and local government and affected public utilities having a substantial interest in a proposed subdivision; provided,

however, that such agency or utility review shall not delay the governing body's action on the plat beyond the time limit specified herein, and the failure of any agency to complete a review of a plat shall not be a basis for rejection of the plat by the governing body.

(3) In prescribing the minimum contents of the subdivision regulations, the department of intergovernmental relations, through its division of planning, shall require the submission by the subdivider to the governing body of an environmental assessment.

(3.1) When a subdivision is proposed in an area for which a master plan has been adopted pursuant to sections 11-3801 through 11-3856 and the proposed subdivision will be in compliance with the plan ~~or~~ and when the subdivision will contain fewer than ten (10) parcels ~~and less than twenty (20) acres~~ none of which are larger than one (1) acre in size, a planning board established pursuant to sections 11-3801 through 11-3856 and having jurisdiction over the area involved may exempt the subdivider from the completion of all or any portion of the environmental assessment. When such an exemption is granted, the planning board shall prepare and certify a written statement of the reasons for granting the exemption. A copy of this statement shall accompany the preliminary plat of the subdivision when it is submitted for review. Where no properly established planning

board having jurisdiction exists, the governing body may grant exemptions as specified in this paragraph.

(4) Where required the environmental assessment shall accompany the preliminary plat and shall include:

(a) a description of every body or stream of surface water as may be affected by the proposed subdivision, together with available ground water information, and a description of the topography, vegetation and wildlife use within the area of the proposed subdivision;

(b) maps and tables showing soil types in the several parts of the proposed subdivision, and their suitability for any proposed developments in those several parts;

(c) a community impact report containing a statement of anticipated needs of the proposed subdivision for local services, including education and busing, roads and maintenance, water, sewage, and solid waste facilities, and fire and police protection;

(d) such additional relevant and reasonable information as may be required by the department through its division of planning.

(5) Local subdivision regulations shall include procedures for the summary review and approval of subdivision plats containing five (5) or fewer parcels where proper access to all lots is provided, where no land in the subdivision will be dedicated to public use for parks or

playgrounds and which have been approved by the department of health and environmental sciences where such approval is required by sections 69-5001 through 69-5005; provided that reasonable local regulations may contain additional requirements for summary approval.

(6) Subdivision regulations may authorize the governing body to grant variances from the regulations when strict compliance will result in undue hardship and when it is not essential to the public welfare. Any variance granted pursuant to this subsection must be based on specific variance criteria contained in the subdivision regulations.

~~(7) Local regulations may provide that in lieu of the completion of the construction of any public improvements prior to the approval of a final plat, the governing body shall require a bond or other reasonable security, in an amount and with surety and conditions satisfactory to it, providing for and securing the construction and installation of such improvements within a period specified by the governing body and expressed in the bonds or other security.~~

~~(8)~~ (7) In the event that any governing body has not adopted subdivision regulations by July 1, 1974, which meet or exceed the prescribed minimum requirements, the department shall, through its division of planning, no later than January 1, 1975, promulgate reasonable regulations to be enforced by the governing body. If at any time thereafter

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the governing body adopts its own subdivision regulations, these shall supersede those promulgated by the department but shall be no less stringent.

(8) The additional requirements provided for in this act shall take effect upon its passage and approval. The department shall modify its minimum requirements to comply with this act within thirty (30) days of passage and each governing body shall amend its subdivision regulations so as to meet or exceed the minimum requirements by July 1, 1975. The procedures and time periods provided in subsection (7) for departmental review and enforcement in case of noncompliance shall apply."

Section 5. Section 11-3864, R.C.M. 1947, is amended to read as follows:

"11-3864. Dedications of portions of subdivisions to the public--cash donations in lieu of dedications--waivers. (1) A plat of a residential subdivision shall show that one-ninth (1/9) of the combined area of lots five (5) acres or less in size and one-twelfth (1/12) of the combined area of lots greater than five (5) acres in size, exclusive of all other dedications, is forever dedicated to the public for parks or playgrounds. No dedication may be required for the combined area of those lots in the subdivision which are larger than ten (10) acres exclusive of all other dedications. The governing body, in consultation with the

planning board having jurisdiction, may determine suitable locations for such parks and playgrounds.

(2) Where, because of size, topography, shape, location, or other circumstances, the dedication of land for parks or playgrounds is undesirable, the governing body may, for good cause shown, make an order to be endorsed and certified on the plat accepting a cash donation in lieu of the dedication of land and equal to the fair market value of the amount of land that would have been dedicated. For the purpose of this section, the fair market value is the value of the ~~unsubdivided~~ subdivided, unimproved land. Such cash donation shall be paid into the park fund to be used for the purchase of additional lands or for the initial development of parks and playgrounds.

(3) If the proposed plat provides for a planned unit development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside therein, the governing body may issue an order waiving land dedication and cash donation requirements.

(4) If a tract of land is being developed under single ownership as a part of an overall plan, and part of the tract has been subdivided and sufficient park lands have been dedicated to the public from the area that has been subdivided to meet the requirements of this section for the

entire tract being developed, the governing body shall issue an order waiving the land dedication and cash donation requirements for the subsequently platted area.

(5) The local governing body may waive dedication and cash donation requirements where all of the parcels in a subdivision are five (5) acres or more in size and where the subdivider enters a covenant to run with the land and revocable only by mutual consent of the governing body and the property owner that the parcels in the subdivision will never be subdivided into parcels of less than five (5) acres and that all parcels in the subdivision will be used for single family dwellings.

(6) The governing body may waive dedication and cash donation requirements when the subdivider agrees to create a property owners' association for the proposed subdivision and to deed to the association land to be held in perpetuity for use as parks or playgrounds. The area of land to be deeded to the association shall equal the amount that would otherwise have been dedicated to public use.

(7) The governing body may waive dedication and cash donation requirements for subdivision to be created by rent or lease where the subdivider agrees to develop parks or playgrounds within the subdivision for the common use of the residents of the subdivision. The area of land to be reserved for this purpose shall equal the amount that would

otherwise have been dedicated to the public."

Section 6. There is a new R.C.M. section numbered 11-3865.1 that reads as follows:

11-3865.1. Guarantee of improvements and compensation for services. (1) No subdivision may be approved until the subdivider has submitted and the governing body has approved, one or a combination of the following:

(a) a subdivision improvements agreement in which the subdivider agrees to construct any required public improvements shown in the plat, together with collateral which is sufficient, in the judgment of the governing body, to provide for the completion of those improvements in accordance with design and time specifications; or

(b) other agreements or contracts setting forth the plan, method, and parties responsible for the construction of any required public improvements shown in the plat which, in the judgment of the governing body, will provide for the completion of those improvements in accordance with design and time specifications.

(2) As improvements are completed, the developer or his agent may apply to the governing body for a release of part or all of the collateral deposited with the governing body. Upon inspection and approval, the governing body shall release the collateral. If the governing body determines that any stipulated improvements are not

constructed in substantial compliance with specifications, it shall furnish the subdivider a list of specific deficiencies and may withhold collateral sufficient to ensure substantial compliance. If the governing body determines that the subdivider will not construct any or all of the improvements in accordance with all of the specifications, it may withdraw and employ from the deposit of collateral any funds necessary to construct the *improvement or improvements* in accordance with the specifications.

(3) *The governing body shall require the subdivider to* compensate the applicable jurisdiction if the subdivision will burden existing local services so as to create a net revenue deficit. Compensation shall equal the estimated cost of services for the subdivision, when fully developed, minus anticipated tax revenues from the developed subdivision.

Section 7. Section 11-3866, R.C.M. 1947, is amended to read as follows:

"11-3866. Submission of subdivision plat to governing body--notice--hearing--approval--disapproval. (1) Except *where* a plat is eligible for summary approval the subdivider shall present to the governing body, or the agent or agency designated thereby, *the preliminary* plat of the proposed subdivision for local review. When the proposed subdivision

lies within the boundaries of an incorporated city or town, *the preliminary plat shall be submitted to and* approved by the city or town governing body. When the proposed subdivision is situated entirely in an unincorporated area the preliminary plat shall be submitted to and approved by the governing body of the county; however, if the proposed subdivision lies within one (1) mile of a third class city or town or within two (2) miles of a second class city or within three (3) miles of a first class city the county governing body shall submit the preliminary plat to the city or town governing body or its designated agent for review and comment. If the proposed subdivision lies partly within an incorporated city or town, the proposed plat thereof must be submitted to and approved by both the city or town and *the county governing bodies. This section does not limit* the authority of certain municipalities to regulate subdivisions beyond their corporate limits pursuant to *section 11-3305.*

(2) The governing body shall approve, conditionally approve, or reject the preliminary plat within sixty (60) days of its presentation unless the subdivider consents to an extension of the review period. The preliminary plat shall show all pertinent features of the proposed subdivision and all proposed improvements. The governing body or its designated agent or agency shall review the preliminary plat to determine whether it conforms to the

local master plan if one has been adopted pursuant to sections 11-3801 through 11-3856 to the provisions of this act, and to rules and regulations *prescribed or adopted* pursuant to this act.

(3) The governing body or its authorized agent or agency shall hold a public hearing on the preliminary plat and shall consider all relevant evidence relating to the public health, safety and welfare, including the environmental assessment, to determine whether the plat should be approved, conditionally approved, or disapproved by the governing body. Notice of such hearing shall be given by *publication in a newspaper* of general circulation in the county not less than fifteen (15) days prior to the date of the hearing. The subdivider and each property owner of record immediately adjoining the land included in the plat shall also be notified of the hearing by registered mail not less than fifteen (15) days prior to the date of the hearing. When a hearing is held by an agent or agency designated by the governing body, the agent or agency *shall* act in an advisory capacity and recommend to the governing body the approval, conditional approval, or disapproval of the plat. This recommendation must be submitted to the governing body in writing not later than ten (10) days after the public hearing. If the governing body rejects or conditionally approves the preliminary plat, it shall

forward one (1) copy of the plat to the subdivider accompanied by a letter over the appropriate signature stating the reason for rejection or enumerating the conditions which must be met to assure approval of the final plat.

(4) The basis for the governing body's decision to approve, conditionally approve, or disapprove a subdivision shall be whether the preliminary plat, subdivision improvements agreement, environmental assessment, public hearing, planning board recommendations and additional information demonstrate that development of the subdivision will result in a net public benefit to the applicable jurisdiction, and surrounding area. If a net public benefit is not demonstrated the governing body shall disapprove the subdivision. The decision of the *governing body shall* include findings of fact based on the following criteria for net public benefit:

(a) expressed public opinion;

(b) effects on agriculture;

(c) effects on local services;

(d) effects on taxation;

(e) effects on the natural environment; and

(f) effects on lifestyles.

~~(4)~~ (5) *Upon approving or conditionally approving* a preliminary plat, the governing body shall provide the

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subdivider with a dated and signed statement of approval. This approval shall be in force for not more than one (1) calendar year; at the end of this period the governing body may, at the request of the subdivider, extend its approval for no more than one (1) calendar year."

Section 8. There is a new R.C.M. section numbered 11-3877 that reads as follows:

11-3877. Citizen legal review. (1) Any person aggrieved by a decision or alleged lack of enforcement by the governing body under this act may obtain a review of the decision by petition, duly verified, to a district court in a county where any part of the subdivision is located, stating the reasons why the decision or failure to enforce is illegal, abritrary, or otherwise unsupportable in whole or in part. This petition shall be presented to the court within thirty (30) days after the decision of the governing body and shall prescribe the time within which a return to the governing body shall be made and notice served upon the subdivider's attorney, which shall not be less than ten (10) days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the governing body, and on good cause shown, grant a restraining order.

(2) The court shall make its decision on the basis of

the record unless it shall appear to the court that testimony is necessary for the proper disposition of the matter, in which case the court may take evidence or appoint a referee to take evidence as it may direct and may direct the referee to report the evidence to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

(3) Costs in the district and supreme court shall not be allowed against the governing body unless it appears to the court that it acted with gross negligence or in bad faith, or with malice in making the decision appealed from.

Section 9. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 10. Effective date. This act is effective upon passage and approval.

-End-

RESOURCES

February 22, 1975

The Natural Resources Committee convened in the Governor's Reception Room on February 22, 1975 at 10:20 a.m. with Chairman Bradley presiding and absent were Reps. Fishbaugh, Barrett, and Luebeck.

HBs 652 and 666 Chairman Bradley announced since these were similar bills they would be heard together.

REP. KEMMIS, the chief sponsor of HB 652, was the first proponent speaker. He stated this bill proposes several amendments, some major and some minor, to the subdivision and filing act. He went through the amendments as they appear in the bill. One of the main amendments was the changing of the definition of a subdivision to any division of land. The occasional sale provision is struck and it provides the conditions under which a waiver can be granted--tightens them up. The subdivider must set aside collatoral to cover all necessary improvements required by the subdivision. Another major change is to require where the subdivision has an impact of any kind on the surrounding area the cost of the impact is held to be a responsibility of the developer. Park dedication must be based on a fair market value of the developed land--this is to encourage that land be set aside rather than cash in lieu thereof.

REP. VINCENT, Chief sponsor of HB 666, passed out copies of an amended version of his bill and this is exhibit 1. He stated he was a proponent of this piece of legislation primarily because of the tragic intrusion on the agriculture land base of Montana. He said this was especially brought home to him in his home county, Gallatin, one has to drive but a short distance to see some of the best agricultural land covered by houses and subdivisions. Net public benefit is changed to "Public Interest" and he read from the new amended bill the criteria that a local governing body would use in determing if the subdivision was in the public interest, an amendment also provides for a citizen review of the entire process.

WYNN RAINBOLT, from Darby, Mt, stated he had three thousand acres between Hamilton and Darby and he said he planned to subdivide it and the only restrictions are his conscience and county commissioners; and since most of the land developers are in the business to line their pockets, more restrictions and controls are urgently needed.

SUSAN BRYAN, Montana League of Women Voters, stated they were happy to see these smendments to the subdivision law as they were things that had been of concern to them. She stated these were needed so it could insure that a new subdivision was an asset and not a liability; and would be a big help in decision making at local levels.

TINA TORGRIMSON, EIC, Montana Subdivision Inventory Project, passed around copies of a tabloid called "Montana Land Development" which is an inventory project of the EIC on subdivisions completed in February 1975 and this is exhibit 2. She stated she strongly supported the bills because of research she had done. She said there are 1/2 million acres divided into pieces of less than 40 acres and subdivision is continuing at a rapid pace and present laws do not seem to be slowing it very much.

TONYA BLOOM, Hamilton, representing self, stated there was a definite need for these two bills. She said often local planning people do not believe they have the right to consider the long term consideration. If a community needs a certain development, they need to be given authority and encouragement: but principles must be established first. Also, she said people in the counties will not usually act without a push from the state.

JOHN BRENNAN, Hamilton, spoke next and his testimony is exhibit 3.

PAUL BRUNNER, Realtor, Ovando Advisory Planning Board (Members planned to be there and couldn't), also representing self, stated they were involved in law suits dealing with keeping out unwanted subdivisions. He felt these bills were very important because it gives the people of the area a chance to say if they want it--or can afford it.

JERRY GOSSEL, Bozeman, representing self, spoke next and his testimony is exhibit 4.

WILLIAM A. COMER, Madison County Planning Board, was the next proponent speaker and his testimony on the two bills is exhibit 5.

DOROTHY TROSPER, representing Flathead Tomorrow, was the next speaker and her testimony is exhibit 6.

BILL LONG, Professional economist, spoke next, and his textimony is exhibit 7.

Lacking time to speak but leaving testimony favoring the bills was Bill Cunningham of Helena. His testimony is exhibit 8.

OPPONENTS
EVERETT SNORTLAND, Montana Farm Bureau, and his textimony is exhibit 9.

JEAN VALSETH, Farm Bureau Women's Committee from Martinsdale, was the next speaker and her testimony is exhibit 10.

H. S. HANSON, Montana Technical Council, stated he represented 2000 individuals and counting their fam.'ies, it would be about 7000 people. He said they are opposed to these two bills. He felt these bills would cause a moratorium on subdivisions and felt their jobs would be jeopardized. He also stressed that 1017 of last year had been in existence only since July 1, 1975.

DICK AINSWORTH, Montana Association of Reg. Land Surveyors, was the next speaker and his testimony is exhibit 11.

CLIFF CHRISTIAN, Montana Association of Realtors, stated he feared each legislative session bills will be in to amend the subdivision act. He felt this makes it difficult for the local governing bodies as they don't get a chance to become familiar with one law before they get another.

WILLIAM DIEHL, representing himself, suggested a development might be able to provide its own social services, even schools. He felt these bills would increase the costs to where even fewer people could afford to buy homes.

STAN STEADMAN, City County Planning Board, Gallatin County, stated since the passage of 1017 they have had one subdivision in the Bozeman area. He said they had 1000 vacant subdivision lots within their boundaries. He felt the necessary legislation is already present. He stated they have had some concern about the occasional sale in their community, and would like to see that part deleted from the subdivision act.

RUTH BUSCH, realtor from Sanders County, stated she opposed bureaucratic control and felt that laws that didn't benefit all the counties had something wrong with them. She said ten acres can support more people than 100 acres have supported in the last 100 years. She said please consider carefully as some can't afford 7 to 9 thousand dollars per acre.

REBUTTAL

REP. KEMMIS, said there seemed to be a general feeling that subdivisions should be reviewed and occasional sales deleted. He said this is not a moratorium bill and is not intended as one--he said what they are interested in is to bring subdivision activity under some kind of legislation so the costs are internalized. He said land planners cannot take care of this at the local level--if they could he wouldn't be supporting this legislation.

REP. VINCENT, stated he wanted to make it emphatically clear that he supported development. He said HB 666 is a genuine example of local control which seemed to be wanted; however, now it is being opposed. He said HB 666 simply says that a subdivision will be approved or disapproved on the basis of public interest. He read from a list of the Ravalli County Clerk and Recorder on recorded subdivisions from 1950 through 1974. In 1950 there were 25 acres subdivided, in 1975, 8008--which he said certainly constitutes an explosion.

Questions were asked by the committee. It was brought out that some counties couldn't afford the help needed to do an adequate job alone. Hal Price, IGR, was called on for information. He stated the people they work with on the local level with the subdivision bill had expressed a wish that the law be left alone. He said there is still very little experience with full implementation of the subdivision law as it didn't occur until January 1.

HB 675 REP. MELOY, the chief sponsor, stated this was one of his most important pieces of legislation. He stated this was an act to establish a process for determining statewide growth policies and guidelines and to identify areas of critical state concern and to appropriate money for the purposes of this act.

ELIZABETH SMITH, representing self, stated this was the hope for the survival of Montana as we know it. It would give individual counties and local people an opportunity to decide what they really want to hold on to and what they want to let go. She said with this we "could take change by the hand before it gets us by the throat."

HOUSE BILL NO. 666

INTRODUCED BY Vincent

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING DISAPPROVAL OF ANY SUBDIVISION IN THE ABSENCE OF A WRITTEN FINDING IN THE PUBLIC INTEREST; ~~PROVIDING FOR EXPANDED CITIZEN LEGAL REVIEW OF SUBDIVISION DECISIONS MADE BY THE GOVERNING BODY~~; AMENDING SECTION 11-3866, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 11-3860, R.C.M. 1947, is amended to read as follows:

" 11-3860. Statement of purpose. It is the purpose of this act to promote the public health, safety, and general welfare by regulating the subdivision of land; to prevent overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements; to ~~encourage~~ require development in harmony with the natural environment; to require that approval of any subdivision be contingent upon a written finding of public interest by the governing body; and to require uniform monumentation of land subdivisions and transferring interests in real property by reference to plat or certificate of survey."

Section 2. Section 11-3866, R.C.M. 1947, is amended to read as follows:

(4) The basis for the governing body's decision to approve, conditionally approve or disapprove a subdivision shall be whether the preliminary plat, environmental assessment, public hearing, planning board recommendations and additional information demonstrate that development of the subdivision would be in the public interest. The governing body shall disapprove any subdivision which it finds not to be in the public interest. To determine whether the

proposed subdivision would be in the public interest the governing body shall issue written findings of fact which weigh the following criteria for public interest:

(a) the basis of the need for the subdivision;

(b) expressed public opinion;

(c) effects on agriculture;

(d) effects on local services;

(e) effects on taxation ;

(f) effects on the natural environment;

(g) effects on wildlife and wildlife habitat, and

(h) effects on the public health and safety.

Section 3. There is a new R.C.M. section numbered 11-3877 that reads as follows:

11-3877. Citizen legal review. (1) Any person aggrieved by a decision or alleged lack of enforcement by the governing body under this act may obtain a review, within a reasonable period of time of the decision by petition, duly verified, to a district court having jurisdiction where any part of the subdivision is located, stating the reasons why the decision or failure to enforce is contrary to law, arbitrary, or otherwise unsupportable in whole or in part.

(2) Costs in the district and supreme court shall not be allowed against the governing body unless it appears to the court that it acted with gross negligence or in bad faith, or with malice in making the decision appealed from.

Section 9. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 10. Effective date. This act is effective upon passage and approval.

H.B. 666: Additions to the Subdivision Regulation and Platting Act

Amendment: The governing body would be mandated to disapprove any subdivision which it finds not to be in the public interest.

To determine the public interest the governing body would examine the record and issue written findings of fact based on specific public interest criteria: need for the subdivision, expressed public concern, effects on agriculture, local services, taxation, the natural environment and on wildlife.

Justification: This amendment would preserve discretionary decision-making at the local level and, at the same time, sharpely limit arbitrary and capricious decision-making. The amendment merely indicates what the governing body should already do as a matter of course: undergo a systematic thought process to arrive at a sound, defensible decision. Numberous examples of arbitrary decisions exist, such as the "Bitterroot Forks" subdivision approval in Ravalli County, in complete disregard of public opinions and natural values. This vitally important amendment will provide a standard for local decision-making with necessary public interest criteria.

Amendment: Any person aggrieved by a decision or alleged lack of enforcement of the subdivision law by the governing body may obtain legal review in districtcourt.

Justification: This provision would help eliminate procedural obstacles to judicial relief but would not ~~revise~~ reverse the traditional burden of proof in which the plaintiff has to demonstrate a prima facie case. Unnecessary suits would still be discouraged by high court costs and the requirement that the party must show that he is "aggrieved" by the decision. Of course, such parties could include subdividers as well as other citizens.

RESOURCES

FEBRUARY 25, 1975

The Natural Resources Committee convened in room 436, at 6:35 p.m. on February 25, 1975, with Chairman Bradley presiding to have executive session on the following bills.

HB 652 Rep. Kemmis went through his suggested amendments which were: page 1, lines 19 through 22, strike the underlined material; page 15, line 20, strike all of subsection 9; and renumber all subsequent subsections. He stated they had done away with the requirement that the subdivider assume the added costs. He then moved the amendments be adopted. Rep. Schye seconded the motion. Motion passed unanimously (absent were Jack Moore, Quilici, Stoltz).

Rep. Richards moved do pass as amended. Rep. Shelden questioned the occasional sale. Rep. Huennekens and Rep. Jim Moore also stated they favored leaving the occasional sale language in the bill. Rep. Kemmis stated this would be found on page 5, lines 10 and 11, and on page 8, lines 10 and 11, and it would be reinserting the struck material. Motion was so made by Rep. Shelden and the motion carried (voting no were Bradley and Richards--absent were the same as above). Vote was then taken on the do pass as amended--and it passed unanimously (absent being Jack Moore, Quilici, Stoltz). Rep. Stoltz had left a request to be recorded as "aye" on a do pass for HB 652.

HB 666 Rep. Kemmis went through the suggested amendments for this bill which are:
1. Amend the title--lines 7 and 8, by striking "net public benefit" and inserting "public interest"; and on lines 8 and 9 by striking "PROVIDING FOR EXPANDED CITIZEN LEGAL REVIEW OF SUBDIVISION DECISIONS MADE BY THE GOVERNING BODY; and amend line 10, title, by striking "THROUGH 11-3864" and inserting ", 11-3861";
2. Page 1, line 25, following "a" insert "written";
3. Page 2, lines 1, 2 and 3 by striking all the language;
4. Page 5, lines 16 and 17, reinsert struck language;
5. Strike all of subsection (13) of section 2;
6. Strike all of sections 3, 4 and 5 and 6 and renumber subsequent subsections;
7. Page 22, lines 11 through 17, strike these lines and insert:"would be in the public interest. The governing body shall disapprove any subdivision which it finds not to be in the public interest. To determine whether the proposed subdivision would be in the public interest the governing body shall issue written findings of fact which weigh the following criteria for public interest; (a) the basis of the need for the subdivision;" and reletter subsequent subsections;
8. Strike section 8 and renumber.

Rep. Fishbaugh moved the amendments be adopted. Motion carried unanimously. Rep. Kemmis moved do pass as amended. Motion carried with Rep. Ellison abstaining; Reps. Jack Moore, Quilici, Stoltz absent. Rep. Stoltz had left a written request to be recorded as "aye" on a do pass for HB666.

Meeting adjourned at 7 p.m.

Respectfully submitted,

Dorothy Bradley

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Dorothy Bradley, Chairman

RESOURCES

FEBRUARY 28, 1975

The Natural Resources Committee convened at 9:20 a.m., February 28, 1975, in room 436 with Chairman Bradley presiding and a quorum present to consider HB 675.

HB 675 Rep. Meloy passed copies of his amendments to the committee members, exhibit 1. He said these were mostly housekeeping changes with just one substantive change and this was to section 19 on page 17. He said the bill was a mechanism for getting the local people to say what direction they wanted Montana to go. Each county decides what they want in their county, although this might cross county lines if what is being decided covers a broader spectrum. Without section 19, he said, all you would have is policy.

Rep. Meloy moved that the amendments as presented be adopted. Motion carried. Absent were Fishbaugh, Barrett, Ellison, Huennekens, Jack Moore, Quilici, Richards, Stoltz.

Rep. Meloy moved do pass as amended. This motion also carried unanimously with the same absent as above.

Rep. Meloy said this bill would go to appropriations after being printed with the amendments in.

Meeting adjourned at 9:32 a.m.

Respectfully submitted,

Dorothy Bradley

Dorothy Bradley, Chairman

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Senator Smith questioned if there are present laws that protect people from being taken advantage of when purchasing land. Senator Watt feels these laws are not being enforced.

Senator Colberg asked Mr. Tawney if he felt the present subdivision laws are working. Mr. Tawney stated that some problems need to be corrected although he feels the present law is working to an extent.

Senator Flynn asked, "Does each and every county enforce their subdivision laws. Also, are there some counties that don't abide by these laws?" Mr. Hal Price, Administrator of the Planning Division of Intergovernmental Relations, stated that last December, all 56 counties had subdivision regulations which are pursuant to state subdivision law. Fifteen counties had not met that requirement. Counties which have many subdivision developments do not have the adequate funding or staffing. Mr. Price continued by saying that the county commissioners would study the local control. He stated that the Department approves the local regulation that requires improvements and planning specifications.

Senator Galt asked Mr. Price if all plans had to be presented before the IGR Department. Mr. Price stated that they did not; the present subdivision plats are being kept in an orderly file in the each county courthouse.

CONSIDERATION OF HB 666: An act to provide for a guarantee of improvements and compensation for the cost services created by subdivisions; requiring disapproval of any subdivision in the absence of a demonstrated public interest.

Representative John Vincent, author, stated that HB 666 is a common sense approach of approving or disapproving a subdivision that is based on local control. The local unit of government determines whether or not this subdivision is going to be in the public interest. Mr. Vincent feels this is a systematic approach which he feels would be beneficial. It is a visable approach, a local controlled approach and is an expressed public opinion.

Mr. H. S. Hanson, Montana Technical Council, feels it would be very difficult to pinpoint of what is the "public interest."

Mr. Everett Snortland believes the subdivision law is adequate until the people of Montana can make the determination as to what kind of a land use plan they wish to pursue. House Bill No. 666 contains such stringent criteria for the subdivider to have to comply with. It almost seems to be a type of harrassment legislation. (See Attachment #8.)

Mr. Cliff Christian testified in opposition of HB 666. He discussed impact statements, and he stated that county commissioners have no specific criteria. Criteria is needed to base a decision.

Mr. Vincent believes the public officials will be fully capable of basing a judgement on this criteria. He informed the members that he would have no objection if they wanted to amend the bill to allow additional criteria.

CONSIDERATION OF HJR 53: Urging the United States Environmental Protection Agency to study the air pollution impact of utilizing for union basin coal and lignite.

Representative Kemmis, author, said this resolution would request the E.Q.C. to study air pollution impact of utilizing coal. He believes trace elements of heavy metals in the coal need to be revealed.

CONSIDERATION OF HJR 58: Uphold the existing state and federal air pollution control laws and regulations.

Representative Kemmis, also author of this resolution, stated the bill's purpose was to ask the Department of Health to clarify all wilderness and park areas in the state within Montana as Class I Air Quality Areas. It also suggests that the governor of Montana ask for no redesignation of any area within Montana to a Class III Area.

Mr. Richard Klinger, attorney from the Department of Health, stated that Mr. Kemmis' resolution suggests that the state opt for a moderate control development as opposed to a heavy industrial development. This resolution would have no effect on the Department of Health.

CONSIDERATION AND DISPOSITION OF HB 351: Polly Holmes "no smoking bill" arrived in the Natural Resources and Fish and Game Committee this morning. Senator Watt felt this bill was ready to act on since the bill had been previously heard. He moved that HB 351 BE CONCURRED IN. The motion was seconded by Senator Roskie; it carried with Senator Flynn voting against.

DISPOSITION OF HJR 58: Senator Watt moved HJR 58 BE CONCURRED IN. The motion was seconded by Senator Colberg and carried unanimously. Senator Colberg volunteered to carry this resolution on the floor.

DISPOSITION OF HJR 53: Senator Watt moved HJR 53 BE CONCURRED IN. The motion was seconded by Senator Smith. Senators Manley, Galt and Flynn voted against the motion. Senator Watt volunteered to carry the bill on the floor.

DISPOSITION OF HB 652: There was further discussion on HB 652 before action was taken. Senator Flynn stated that he did not like the bill left to 20 acres.

Senator Galt moved HB 652 DO NOT PASS. The motion was seconded by Senator Roskie. (See roll call vote.) It was Senator Watt's opinion that HB 652 did many other things that the committee seemed to neglect. The motion carried 5 to 3.

DISPOSITION OF HB 666: Senator Manley moved HB 666 BE CONCURRED IN. The motion was seconded by Senator Colberg. Before the final vote was taken, the members briefly discussed the bill, each expressing his opinion.

It was Senator Manley's opinion that the bill would be good since it would be based on the local level. It speaks directly to local problems.

Debbie Schmidt informed the committee that the amendments had to be drafted to reinstate original language of the bill. Senator Smith moved for amendments to the body of the bill. The motion was seconded by Senator Colberg and carried

unanimously. The title, too, had to be amended. Senator Roskie moved to amend the title, seconded by Senator Manley. The motion was carried unanimously. (See standing committee report for amendments.) Senator Manley further moved HB 666 AND AS SO AMENDED, BE CONCURRED IN. The motion was seconded by Senator Colberg.

Before the committee voted, they discussed the bill further. Senator Roskie doesn't feel the public opinion alone is enough to make some of these governing public opinions. He further doesn't believe they need to be limited in their authority to act.

After further discussion, a roll call vote was taken. Senators Galt, Roskie and Flynn voted against Manley's motion. (See roll call vote.)

CONSIDERATION OF HB 104: Senator Jergeson moved HB 104 from the table since similar bill, SB 236, was killed in the House. Senator Manley seconded the motion; it carried unanimously. Senator Jergeson informed members he would have some amendments to present to HB 104 before the next committee meeting.

ADJOURNMENT: There being no further business to discuss at this time, Senator Flynn adjourned the meeting at 12:15 a.m.

SENATOR ELMER FLYNN, CHAIRMAN

RESOURCES

STANDING COMMITTEE REPORT

March 18, 1975

MR. PRESIDENT:

We, your committee on NATURAL RESOURCES AND FISH & GAME

having had under consideration HOUSE Bill No. 666

Respectfully report as follows: That HOUSE Bill No. 666,

third reading copy, be amended as follows:

1. Amend title, lines 5 through 7.
   Following: "AN ACT"
   Strike: "TO PROVIDE FOR A GUARANTEE OF IMPROVEMENTS AND COMPENSATION FOR THE COST OF SERVICES CREATED BY SUBDIVISIONS;"

2. Amend page 5, section 1, lines 5 through 8.
   Following: "parcels,"
   Strike: "CONTAINING LESS THAN FORTY (40) ACRES, EXCLUSIVE OF PUBLIC ROADWAYS"
   Insert: "containing less than twnaty (20) acres, exclusive of public roadways"

3. Amend page 5, section 1, lines 14 and 15.
   Following: "parcels"
   Strike: "LESS THAN FORTY (40) ACRES"
   Insert: "less than twenty (20) acres"

AND AS SO AMENDED, BE CONCURRED IN

SEN. ELMER FLYNN Chairman.

STATE PUB CO.
Helena, Mont.

HOUSE BILL NO. 666

INTRODUCED BY VINCENT, MELOY, HOENNEKENS

HALVORSON, JAMES MOORE

A BILL FOR AN ACT ENTITLED: "AN ACT ~~TO PROVIDE FOR A GUARANTEE OF IMPROVEMENTS AND COMPENSATION FOR THE COST OF SERVICES CREATED BY SUBDIVISIONS;~~ REQUIRING DISAPPROVAL OF ANY SUBDIVISIONS IN THE ABSENCE OF A DEMONSTRATED ~~NET PUBLIC BENEFIT~~ PUBLIC INTEREST; ~~PROVIDING FOR EXPANDED CITIZEN LEGAL REVIEW OF SUBDIVISION DECISIONS MADE BY THE GOVERNING BODY;~~ AMENDING SECTIONS 11-3860, ~~THROUGH 11-3864~~ 11-3861 AND 11-3866, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 11-3860, R.C.M. 1947, is amended to read as follows:

"11-3860. Statement of purpose. It is the purpose of this act to promote the public health, safety, and general welfare by regulating the subdivision of land; to prevent overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements; to ~~encourage~~ require development in harmony with the natural environment; to require that approval of any subdivision be contingent upon a WRITTEN finding of ~~net public benefit~~ PUBLIC INTEREST by the governing body; ~~to require that the subdivider assume financial responsibility for the completion of improvements and cost of services required by the subdivision;~~ and to require uniform monumentation of land subdivisions and transferring interests in real property by reference to plat or certificate of survey."

Section 2. Section 11-3861, R.C.M. 1947, is amended to read as follows:

"11-3861. Definitions. As used in this act, unless the context or subject matter clearly requires otherwise, the following words or phrases shall have the following meanings:

(1) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.

(2) "Dedication" means the deliberate appropriation of land by an owner for any general and public use, reserving to himself no rights which are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted.

(2.1) "Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring, or contracting to

REFERENCE BILL

transfer, title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this act. Provided that where required by this act the land upon which an improvement is situated has been subdivided in compliance with this act, the sale, rent, lease or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land and is not subject to the terms of this act.

(3) "Examining land surveyor" means a registered land surveyor duly appointed by the governing body to review surveys and plats submitted for filing.

(4) "Governing body" means a board of county commissioners or the governing authority of any city or town organized pursuant to law.

(4.1) "Irregularly shaped tract of land" means a parcel of land other than an aliquot part of the United States government survey section or a United States Government lot the boundaries or areas of which cannot be determined without a survey or trigonometric calculation.

(5) "Planned unit development" means a land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks, or any combination thereof which comprises a planned

mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in common ownership or use.

(6) "Plat" means a graphical representation of a subdivision showing the division of land into lots, parcels, blocks, streets, and alleys, and other divisions and dedications.

(7) "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the layout of streets, alleys, lots, blocks, and other elements of a subdivision which furnish a basis for review by a governing body.

(8) "Final plat" means the final drawing of the subdivision and dedication required by this act to be prepared for filing for record with the county clerk and recorder and containing all elements and requirements set forth in this act and in regulations adopted pursuant thereto.

(9) "Registered land surveyor" means a person licensed in conformance with the Montana Professional Engineers' Registration Act (sections 66-2301 through 66-2347) to practice surveying in the state of Montana.

(10) "Registered professional engineer" means a person licensed in conformance with the Montana Professional Engineers' Registration Act (sections 66-2301 through

66-2347) to practice engineering in the state of Montana.

(11) "Subdivider" means any person who causes land to be subdivided or who proposes a subdivision of land.

(12) "Subdivision" means a division of land, or land so divided, which creates one or more parcels, ~~CONTAINING LESS THAN FORTY (40) ACRES, EXCLUSIVE OF PUBLIC ROADWAYS containing less than twenty (20) acres, exclusive of public roadways~~ CONTAINING LESS THAN TWENTY (20) ACRES, EXCLUSIVE OF PUBLIC ROADWAYS ~~regardless of size~~, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed, and shall include any resubdivision; and shall further include any condominium or area, regardless of its size, which provides or will provide multiple space for recreational camping vehicles, or mobile homes. A subdivision shall comprise only those parcels ~~LESS THAN FORTY (40) ACRES less than twenty (20) acres~~ LESS THAN TWENTY (20) ACRES which have been segregated from the original tract, and the plat thereof shall show all such parcels whether contiguous or not. Provided, however, condominiums constructed on land divided in compliance with this chapter are exempt from the provisions of this chapter.

~~(13) "Occasional sale" means one sale of a division of land within any twelve month (12) period.~~

(13) "OCCASIONAL SALE" MEANS ONE SALE OF A DIVISION OF LAND WITHIN ANY TWELVE (12) MONTH PERIOD.

~~(13) "Subdivision improvements agreement" means one or more security agreements which may be accepted by a governing body to secure the construction of such public improvements within the subdivision as are required by subdivision regulations and shall include collateral, such as, but not limited to, performance or property bonds, private or public escrow agreements, loan commitments, assignments of receivables, liens on property, deposit of certified funds, or other similar surety agreements.~~"

~~Section 3. Section 11-3862, R.C.M. 1947, is amended to read as follows:~~

~~"11-3862. Surveys required -- exceptions -- standards for monumentation. (1) All divisions of land for sale other than a subdivision after the effective date of this act into parcels which cannot be described as 1/32 or larger aliquot parts of a United States government section or a United States government lot must be surveyed by or under the supervision of a registered land surveyor.~~

~~(2) Every subdivision of land after June 30, 1973, shall be surveyed and platted in conformance with this act by or under the supervision of a registered land surveyor. Subdivision plats shall be prepared and filed in accordance with this act and regulations adopted pursuant thereto. All division of sections into aliquot parts and retracement of lines must conform to United States bureau of land~~

~~accompanied by and refer to appropriate certificates of survey and plats when presented for recording.~~

~~(5) The provisions of this act shall not apply to the division of state-owned land unless the division creates a second or subsequent parcel from a single tract for sale, rent or lease for residential purposes after July 1, 1974.~~

~~(6) Unless the method of disposition is adopted for the purpose of evading this act, the following divisions of land are not subdivisions under this act but are subject to the surveying requirements of this section for divisions of land not amounting to subdivisions.~~

~~(a) divisions made for the purpose of relocating common boundary lines between adjoining properties.~~

~~(b) divisions made for the purpose of a gift or sale to any member of the landowner's immediate family.~~

~~(c) divisions made by sale or agreement to buy and sell where the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes. Any change in use of the land for anything other than agricultural purposes subjects the division to the provisions of this chapter.~~

~~(d) a single division of a parcel when the transaction is an occasional sale.~~

~~management instructions, and all public land survey corners shall be filed in accordance with Corner Recordation Act of Montana (sections 67-2001 through 67-2019). Engineering plans, specifications, and reports required in connection with public improvements and other elements of the subdivision required by the governing body shall be prepared and filed by a registered engineer or a registered land surveyor as their respective licensing laws allow in accordance with this act and regulations adopted pursuant thereto.~~

~~(3) The county clerk and recorder of any county shall not record any instrument which purports to transfer title to or possession of a parcel or tract of land which is required to be surveyed by this act unless the required certificate of survey or subdivision plat has been filed with the clerk and recorder and the instrument of transfer describes the parcel or tract by reference to the filed certificate or plat.~~

~~(4) Instruments of transfer of land which is acquired for state highways may refer by parcel and project number to state highway plans which have been recorded in compliance with section 32-2413, and are exempted from the surveying and platting requirements of this act; provided, however, that if such parcels are not shown on highway plans of record, instruments of transfer of such parcels shall be~~

~~(7) Subdivisions created by rent or lease are exempt from the surveying and filing requirements of this act but must be submitted for review and approval by the governing body before portions thereof may be rented or leased.~~

~~(8) Unless the method of disposition is adopted for the purpose of evading this act, the requirements of this act shall not apply to any division of land:~~

~~(a) which is created by order of any court of record in this state or by operation of law, or which, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain (sections 93-9901 through 93-9926);~~

~~(b) which is created by a lien, mortgage, or trust indenture;~~

~~(c) which creates an interest in oil, gas, minerals, or water which is now or hereafter severed from the surface ownership of real property;~~

~~(d) which creates cemetery lots;~~

~~(e) which is created by the reservation of a life estate;~~

~~(f) which is created by lease or rental for farming and agricultural purposes.~~

~~(9) The sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement~~

~~situated on one of more parcels of land is not a division of land, as that term is defined in this act, and is not subject to the requirements of this act.~~

~~(10) The department of intergovernmental relations shall, in conformance with the Montana Administrative Procedure Act (sections 82-4201 through 82-4225), prescribe uniform standards for monumentation and for the form, accuracy, and descriptive content of records of survey.~~

~~(11) It shall be the responsibility of the governing body to require the replacement of all monuments removed in the course of construction.~~"

~~Section 4. Section 11-3863, R.C.M. 1947, is amended to read as follows:~~

~~"11-3863. Enforcement by governmental subdivisions -- adoption of regulations -- public hearing. (1) The governing body of every county, city, and town shall, before July 1, 1974, adopt and provide for the enforcement and administration of subdivision regulations reasonably providing for the orderly development of their jurisdictional areas; for the co-ordination of roads within subdivided land with other roads, both existing and planned; for the dedication of land for roadways and for public utility easements; for the improvement of roads; for the provision of adequate open spaces for travel, light, air and recreation; for the provision of adequate transportation,~~

water, drainage, and sanitary facilities; for the avoidance or minimization of congestion; and for the avoidance of subdivision which would involve unnecessary environmental degradation; and the avoidance of danger or injury to health, safety, or welfare by reason of natural hazard or the lack of water, drainage, access, transportation or other public services or would necessitate an excessive expenditure of public funds for the supply of such services.

Prior to adopting or amending subdivision regulations pursuant to this act, the governing body shall submit the proposed regulations or amendments to the division of planning and economic development of the department of intergovernmental relations for review.

Before the governing body adopts subdivision regulations pursuant to this section it shall hold a public hearing thereon and shall give public notice of its intent to adopt such regulations and of the public hearing by publication of notice of the time and place of the hearing in a newspaper of general circulation in the county not less than fifteen (15) nor more than thirty (30) days prior to the date of the hearing.

(2) Not later than December 31, 1973, the department of intergovernmental relations, through its division of planning, shall, in conformance with the Montana Administrative Procedure Act (Sections 82-4201 through

82-4225), prescribe reasonable minimum requirements for subdivision regulations adopted pursuant to this act. The minimum requirements shall include detailed criteria for the content of the environmental assessment required by this act. The department shall provide for the review of preliminary plats by those agencies of state and local government and affected public utilities having a substantial interest in a proposed subdivision; provided, however, that such agency or utility review shall not delay the governing body's action on the plat beyond the time limit specified herein, and the failure of any agency to complete a review of a plat shall not be a basis for rejection of the plat by the governing body.

(3) In prescribing the minimum contents of the subdivision regulations, the department of intergovernmental relations, through its division of planning, shall require the submission by the subdivider to the governing body of an environmental assessment.

(3.1) When a subdivision is proposed in an area for which a master plan has been adopted pursuant to Sections 11-3801 through 11-3856 and the proposed subdivision will be in compliance with the plan or and when the subdivision will contain fewer than ten (10) parcels and less than twenty (20) acres none of which are larger than one (1) acre in size, a planning board established pursuant to Sections

~~11-3801 through 11-3856 and having jurisdiction over the area involved may exempt the subdivider from the completion of all or any portion of the environmental assessment. When such an exemption is granted, the planning board shall prepare and certify a written statement of the reasons for granting the exemption. A copy of this statement shall accompany the preliminary plat of the subdivision when it is submitted for review. Where no properly established planning board having jurisdiction exists, the governing body may grant exemptions as specified in this paragraph.~~

~~(4) Where required the environmental assessment shall accompany the preliminary plat and shall include:~~

~~(a) a description of every body or stream of surface water as may be affected by the proposed subdivision, together with available ground water information, and a description of the topography, vegetation and wildlife use within the area of the proposed subdivision;~~

~~(b) maps and tables showing soil types in the several parts of the proposed subdivision, and their suitability for any proposed developments in those several parts;~~

~~(c) a community impact report containing a statement of anticipated needs of the proposed subdivision for local services, including education and busing, roads and maintenance, water, sewage, and solid waste facilities, and fire and police protection;~~

~~(d) such additional relevant and reasonable information as may be required by the department through its division of planning.~~

~~(5) Local subdivision regulations shall include procedures for the summary review and approval of subdivision plats containing five (5) or fewer parcels where proper access to all lots is provided, where no land in the subdivision will be dedicated to public use for parks or playgrounds and which have been approved by the department of health and environmental sciences where such approval is required by sections 69-5001 through 69-5005; provided that reasonable local regulations may contain additional requirements for summary approval.~~

~~(6) Subdivision regulations may authorize the governing body to grant variances from the regulations when strict compliance will result in undue hardship and when it is not essential to the public welfare. Any variance granted pursuant to this subsection must be based on specific variance criteria contained in the subdivision regulations.~~

~~(7) Local regulations may provide that in lieu of the completion of the construction of any public improvements prior to the approval of a final plat, the governing body shall require a bond or other reasonable security, in an amount and with surety and conditions satisfactory to it, providing for and securing the construction and installation~~

~~of such improvements within a period specified by the governing body and expressed in the bonds or other security.~~

~~(8)~~ ~~(7)~~ ~~In the event that any governing body has not adopted subdivision regulations by July 1, 1974, which meet or exceed the prescribed minimum requirements, the department shall, through its division of planning, no later than January 1, 1975, promulgate reasonable regulations to be enforced by the governing body. If at any time thereafter the governing body adopts its own subdivision regulations, these shall supersede those promulgated by the department but shall be no less stringent.~~

~~(8) The additional requirements provided for in this act shall take effect upon its passage and approval. The department shall modify its minimum requirements to comply with this act within thirty (30) days of passage and each governing body shall amend its subdivision regulations so as to meet or exceed the minimum requirements by July 1, 1975. The procedures and time periods provided in subsection (7) for departmental review and enforcement in case of noncompliance shall apply.~~"

~~Section 5. Section 11-3864, R.C.M. 1947, is amended to read as follows:~~

~~"11-3864. Dedications of portions of subdivisions to the public -- cash donations in lieu of dedications -- waivers. (1) A plat of a residential subdivision shall show~~

~~that one-ninth (1/9) of the combined area of lots five (5) acres or less in size and one-twelfth (1/12) of the combined area of lots greater than five (5) acres in size, exclusive of all other dedications, is forever dedicated to the public for parks or playgrounds. No dedication may be required for the combined area of those lots in the subdivision which are larger than ten (10) acres exclusive of all other dedications. The governing body, in consultation with the planning board having jurisdiction, may determine suitable locations for such parks and playgrounds.~~

~~(2) Where, because of size, topography, shape, location, or other circumstances, the dedication of land for parks or playgrounds is undesirable, the governing body may, for good cause shown, make an order to be endorsed and certified on the plat accepting a cash donation in lieu of the dedication of land and equal to the fair market value of the amount of land that would have been dedicated. For the purpose of this section, the fair market value is the value of the unsubdivided subdivided, unimproved land. Such cash donation shall be paid into the park fund to be used for the purchase of additional lands or for the initial development of parks and playgrounds.~~

~~(3) If the proposed plat provides for a planned unit development with land permanently set aside for park and recreational uses sufficient to meet the needs of the~~

persons who will ultimately reside therein, the governing body may issue an order waiving land dedication and cash donation requirements.

(4) If a tract of land is being developed under single ownership as a part of an overall plan, and part of the tract has been subdivided and sufficient park lands have been dedicated to the public from the area that has been subdivided to meet the requirements of this section for the entire tract being developed, the governing body shall issue an order waiving the land dedication and cash donation requirements for the subsequently platted area.

(5) The local governing body may waive dedication and cash donation requirements where all of the parcels in a subdivision are five (5) acres or more in size and where the subdivider enters a covenant to run with the land and revocable only by mutual consent of the governing body and the property owner that the parcels in the subdivision will never be subdivided into parcels of less than five (5) acres and that all parcels in the subdivision will be used for single family dwellings.

(6) The governing body may waive dedication and cash donation requirements when the subdivider agrees to create a property owners' association for the proposed subdivision and to deed to the association land to be held in perpetuity for use as parks or playgrounds. The area of land to be

deeded to the association shall equal the amount that would otherwise have been dedicated to public use.

(7) The governing body may waive dedication and cash donation requirements for subdivision to be created by rent or lease where the subdivider agrees to develop parks or playgrounds within the subdivision for the common use of the residents of the subdivision. The area of land to be reserved for this purpose shall equal the amount that would otherwise have been dedicated to the public."

Section 6. There is a new R.C.M. section numbered 11-3865.1 that reads as follows:

"11-3865.1. Guarantee of improvements and compensation for services. (1) No subdivision may be approved until the subdivider has submitted and the governing body has approved, one or a combination of the following:

(a) a subdivision improvements agreement in which the subdivider agrees to construct any required public improvements shown in the plat, together with collateral which is sufficient, in the judgment of the governing body, to provide for the completion of those improvements in accordance with design and time specifications; or

(b) other agreements or contracts setting forth the plan, method, and parties responsible for the construction of any required public improvements shown in the plat which, in the judgment of the governing body, will provide for the

~~completion of those improvements in accordance with design and time specifications.~~

~~(2) As improvements are completed, the developer or his agent may apply to the governing body for a release of part or all of the collateral deposited with the governing body. Upon inspection and approval, the governing body shall release the collateral. If the governing body determines that any stipulated improvements are not constructed in substantial compliance with specifications, it shall furnish the subdivider a list of specific deficiencies and may withhold collateral sufficient to ensure substantial compliance. If the governing body determines that the subdivider will not construct any or all of the improvements in accordance with all of the specifications, it may withdraw and employ from the deposit of collateral any funds necessary to construct the improvement or improvements in accordance with the specifications.~~

~~(3) The governing body shall require the subdivider to compensate the applicable jurisdiction if the subdivision will burden existing local services so as to create a net revenue deficit. Compensation shall equal the estimated cost of services for the subdivision, when fully developed, minus anticipated tax revenues from the developed subdivision.~~

Section 3. Section 11-3866, R.C.M. 1947, is amended to read as follows:

"11-3866. Submission of subdivision plat to governing body -- notice -- hearing -- approval -- disapproval. (1) Except where a plat is eligible for summary approval the subdivider shall present to the governing body, or the agent or agency designated thereby, the preliminary plat of the proposed subdivision for local review. When the proposed subdivision lies within the boundaries of an incorporated city or town, the preliminary plat shall be submitted to and approved by the city or town governing body. When the proposed subdivision is situated entirely in an unincorporated area the preliminary plat shall be submitted to and approved by the governing body of the county; however, if the proposed subdivision lies within one (1) mile of a third class city or town or within two (2) miles of a second class city or within three (3) miles of a first class city the county governing body shall submit the preliminary plat to the city or town governing body or its designated agent for review and comment. If the proposed subdivision lies partly within an incorporated city or town, the proposed plat thereof must be submitted to and approved by both the city or town and the county governing bodies. This section does not limit the authority of certain municipalities to regulate subdivisions beyond their

corporate limits pursuant to section 11-3305.

(2) The governing body shall approve, conditionally approve, or reject the preliminary plat within sixty (60) days of its presentation unless the subdivider consents to an extension of the review period. The preliminary plat shall show all pertinent features of the proposed subdivision and all proposed improvements. The governing body or its designated agent or agency shall review the preliminary plat to determine whether it conforms to the local master plan if one has been adopted pursuant to sections 11-3801 through 11-3856 to the provisions of this act, and to rules and regulations prescribed or adopted pursuant to this act.

(3) The governing body or its authorized agent or agency shall hold a public hearing on the preliminary plat and shall consider all relevant evidence relating to the public health, safety and welfare, including the environmental assessment, to determine whether the plat should be approved, conditionally approved, or disapproved by the governing body. Notice of such hearing shall be given by publication in a newspaper of general circulation in the county not less than fifteen (15) days prior to the date of the hearing. The subdivider and each property owner of record immediately adjoining the land included in the plat shall also be notified of the hearing by registered mail not

less than fifteen (15) days prior to the date of the hearing. When a hearing is held by an agent or agency designated by the governing body, the agent or agency shall act in an advisory capacity and recommend to the governing body the approval, conditional approval, or disapproval of the plat. This recommendation must be submitted to the governing body in writing not later than ten (10) days after the public hearing. If the governing body rejects or conditionally approves the preliminary plat, it shall forward one (1) copy of the plat to the subdivider accompanied by a letter over the appropriate signature stating the reason for rejection or enumerating the conditions which must be met to assure approval of the final plat.

(4) The basis for the governing body's decision to approve, conditionally approve, or disapprove a subdivision shall be whether the preliminary plat, ~~subdivision improvements agreement,~~ environmental assessment, public hearing, planning board recommendations and additional information demonstrate that development of the subdivision ~~will result in a net public benefit to the applicable jurisdiction, and surrounding area. If a net public benefit is not demonstrated the governing body shall disapprove the subdivision. The decision of the governing body shall include findings of fact based on the following criteria for~~

~~not public benefit~~ WOULD BE IN THE PUBLIC INTEREST. THE GOVERNING BODY SHALL DISAPPROVE ANY SUBDIVISION WHICH IT FINDS NOT TO BE IN THE PUBLIC INTEREST. TO DETERMINE WHETHER THE PROPOSED SUBDIVISION WOULD BE IN THE PUBLIC INTEREST THE GOVERNING BODY SHALL ISSUE WRITTEN FINDINGS OF FACT WHICH WEIGH THE FOLLOWING CRITERIA FOR PUBLIC INTEREST:

(A) THE BASIS OF THE NEED FOR THE SUBDIVISION;

~~(a)~~ (B) expressed public opinion;

~~(b)~~ (C) effects on agriculture;

~~(c)~~ (D) effects on local services;

~~(d)~~ (E) effects on taxation;

~~(e)~~ (F) effects on the natural environment; ~~and~~

~~(f)~~ (G) effects on ~~lifestyles.~~ WILDLIFE AND WILDLIFE HABITAT, AND

(H) EFFECTS ON THE PUBLIC HEALTH AND SAFETY.

~~(4)~~ (5) Upon approving or conditionally approving a preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. This approval shall be in force for not more than one (1) calendar year; at the end of this period the governing body may, at the request of the subdivider, extend its approval for no more than one (1) calendar year."

~~Section 8. There is a new M.C.A. section numbered 11-3877 that reads as follows:~~

~~11-3877. Citizen legal review. (1) Any person~~

~~aggrieved by a decision or alleged lack of enforcement by the governing body under this act may obtain a review of the decision by petition, duly verified, to a district court in a county where any part of the subdivision is located, stating the reasons why the decision or failure to enforce is illegal, arbitrary, or otherwise unsupportable in whole or in part. This petition shall be presented to the court within thirty (30) days after the decision of the governing body and shall prescribe the time within which a return to the governing body shall be made and notice served upon the subdivider's attorney, which shall not be less than ten (10) days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the governing body, and on good cause shown, grant a restraining order.~~

~~(2) The court shall make its decision on the basis of the record unless it shall appear to the court that testimony is necessary for the proper disposition of the matter, in which case the court may take evidence or appoint a referee to take evidence as it may direct and may direct the referee to report the evidence to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may~~

~~reverse or affirm, wholly or partly, or may modify the decision brought up for review.~~

~~(3) Costs in the district and supreme court shall not be allowed against the governing body unless it appears to the court that it acted with gross negligence or in bad faith, or with malice in making the decision appealed from.~~

Section 4. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 5. Effective date. This act is effective upon passage and approval.

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